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FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington

APR 24 2001

JAMES R. LARSEN, CLERK
DEPUTY

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON
10

11 ALFRED P. CHRISTOFFERSEN,)
12 WILLIAM J. GIBSON, RICHARD F.)
13 MAIN, and JOHN R. WARN,)

14 Plaintiffs,)

15 vs.)

Case No. CS-01-0010-AAM

16 **PLAINTIFFS' STATEMENT OF**
17 **MATERIAL FACTS IN SUPPORT**
18 **OF MOTION FOR SUMMARY**
19 **JUDGMENT FOR**
20 **DECLARATORY RELIEF**

21 WASHINGTON AIR NATIONAL)
22 GUARD, in its capacity as a Federal)
23 Agency, MAJOR GENERAL)
24 TIMOTHY J. LOWENBERG, as a)
25 Federally Recognized Adjutant General)
26 of Washington State, UNITED)
STATES AIR FORCE, a Department)
and Agency of the United States; and)
NATIONAL GUARD BUREAU, an)
Agency of the United States,)

24 Defendants.)

(Cause No. 81-02-03081-0, In the
Superior Court, State of Washington,
County of Spokane)

26 PLAINTIFFS' STATEMENT OF MATERIAL FACTS . . .
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1
2 The following is the statement of material facts not in dispute submitted in
3 support of Plaintiffs' motion for summary judgment for declaration relief,
4 pursuant to Local Rule 56.1(a):
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- 6
- 7 1. Each Plaintiff served as a high-ranking member of the Washington State
8 National Guard (WANG) with distinguished military records.
9 (Affidavits of all four Plaintiffs attached as Exhibit Nos. 6, 7, 8, and 9 to
10 Affidavit of C. Matthew Andersen)
 - 11 2. Each Plaintiff was also employed as a federal civil servant in the
12 position of Air National Guard Technician. They were employed as a
13 caretaker of federal equipment used by WANG. Each Plaintiff had
14 served with distinction. (Affidavits of all four Plaintiffs attached as
15 Exhibit Nos. 6, 7, 8, and 9 to Affidavit of C. Matthew Andersen)
 - 16 3. As a requirement for employment as a Technician, each Plaintiff was
17 required to be in WANG at all times. 32 USC 709.
 - 18 4. Each Plaintiff was terminated from WANG in October 1978 due to
19 retaliatory actions by the WANG Adjutant General by his improper use
20 of a federal employment regulation. (Exhibit No. 2 to Affidavit of C.
21 Matthew Andersen)
 - 22 5. At the time of termination, each Plaintiff was also terminated as a
23 federal civil servant for no reason other than loss of membership in
24 WANG. (Exhibit No. 1 Affidavit of C. Matthew Andersen)
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26 PLAINTIFFS' STATEMENT OF MATERIAL FACTS . . .


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- 1 6. Each Plaintiff has sought relief in several jurisdictions, including before
2 the Air Force Board for Correction of Military Records (AFBCMR).
- 3 7. The termination of each Plaintiff was found to be improper and the
4 AFBCMR reinstated the Plaintiffs in their military capacity on
5 February 22, 2000. The AFBCMR awarded each Plaintiff military back
6 pay to age 55 and increased military retirement benefits. (Exhibits A, B,
7 C and D to the Declaration of Jon McCoy; Exhibit No. 12 to Affidavit of
8 C. Matthew Andersen)
- 9 8. The AFBCMR does not address lost civil service pay and benefits.
10 (Exhibit 2 to Affidavit of C. Matthew Andersen)
- 11 9. Because Plaintiffs' lost their federal civilian Technician positions (in
12 1978) solely because of the improper decision concerning their military
13 status, the Adjutant General of Washington, as their federal employer
14 has taken administrative action to correct their civilian employment
15 records. (Exhibit F to Declaration of Jon McCoy)
- 16 10. As civilian Technicians, each Plaintiff was an employee of the United
17 States Department of the Air Force. 32 USC §709(e)
- 18 11. The Washington State Adjutant General is the sole agent for
19 administration of the Federal Technician Program in the State of
20 Washington. 32 USC §709(d)
- 21 12. WANG's Adjutant General is the "appropriate authority" under the
22 Federal Back Pay Act to make determinations for correction of
23 Technician employment records. 32 USC §709(d).
- 24
- 25

26 PLAINTIFFS' STATEMENT OF MATERIAL FACTS . . .
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- 1 13. WANG's Adjutant General has issued the appropriate Back Pay Act
2 determination that Plaintiffs' dismissal was unwarranted, and provided
3 commensurate relief for the loss of their civilian positions in the form of
4 back pay. (Exhibit E to Declaration of Jon McCoy)
- 5 14. On May 25, 2000, the Washington National Guard received a
6 memorandum (dated May 22, 2000) from Colonel Howard W. Derrick,
7 USAF, Deputy Chief, Financial Management and Comptroller of the
8 National Guard Bureau returning the back pay claims "without action."
9 (Exhibit G to Declaration of Jonathan T. McCoy)
- 10 15. Plaintiffs have commenced suit in the Spokane County Superior Court
11 of Washington. They claim, inter alia, for damages because of lost civil
12 service pay and retirement. (1981-02-03081-0).
- 13 16. The State of Washington asserts that the Federal Back Pay Act controls
14 the relief sought by Plaintiffs in the State action. (See generally
15 Memorandum of Law in Opposition to Remand, Exhibit 11 to Affidavit
16 of C. Matthew Andersen)
- 17 17. There is a judicable conflict between the views of the federal agent,
18 MG Lowenberg and the National Guard Bureau as to who has the
19 authority to make determinations under the Back Pay Act. (See above)

20 DATED this 24th day of April 2001.

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22 
23 C. MATTHEW ANDERSEN, WSBA #06868
24 WINSTON & CASHATT
25 Attorneys for Plaintiffs


26 PLAINTIFFS' STATEMENT OF MATERIAL FACTS ...

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2 I hereby certify that I caused a true and correct
3 copy of the foregoing to be [] mailed, postage
4 prepaid; [] sent via facsimile; [X] hand-delivered,
5 on this 24th day of April 2001 to:

6 Jonathan T. McCoy
7 Assistant Attorney General
8 Attorney General of Washington
9 11215 Washington Street SE
Olympia, WA 98504-0100

10 Rolf H. Tangvald *hand delivered @*
11 U. S. Attorney's Office
12 920 W. Riverside Ave., Suite 300
Spokane, WA 99201-1008

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14 C. MATTHEW ANDERSEN
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